

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WARREN DURHAM, JR.,

Plaintiff,

v.

CITY & COUNTY OF ERIE, et al.,

Defendants.

Civil Action No. 04-297 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on October 6, 2004, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 72], filed on February 1, 2007, recommended that Defendants' motion for summary judgment, or in the alternative, motion to dismiss [Doc. Nos. 58 and 63] be granted and that Plaintiff's motion for summary judgment [Doc. Nos 66 and 68] be denied. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. Objections were filed by Plaintiff on February 12, 2007 [Doc. No. 73] and Responses to objections [74 and 76] were filed on February 20, 2007 and March 9, 2007. After de novo review of the motion and documents in the case, the Report and Recommendation, the objections and responses thereto, the following order is entered:

AND NOW, this 15th day of March, 2007;

IT IS HEREBY ORDERED that the Defendants' motion to for summary judgment, [Doc. No. 58 and 63] are GRANTED.

IT IS FURTHER ORDERED that Judgment is entered in favor of the Defendants and against the Plaintiff.

The Report and Recommendation [Doc. No. 72] of Magistrate Judge Baxter, filed on February 1, 2007, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge